

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 1:16-cr-115  
Also 1:21-cv-093

- vs -

District Judge Susan J. Dlott  
Magistrate Judge Michael R. Merz

RICHARD LEE DeVITO,

Defendant. :

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**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS  
AND REQUIRING THE DEPOSITION OF ATTORNEY SARAH  
KOVOOR**

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This action under 28 U.S.C. § 2255 is before the Court on Objections by both the United States (ECF No. 126) and the Defendant (ECF No. 127) to the Magistrate Judge's Report and Recommendations (ECF No. 125).

Defendant “objects to the R&R’s conclusion that Ground One should be denied on the merits without any statement or testimony from the attorney alleged to be ineffective.” (ECF No. 127, PageID 1000). The attorney in question, Sarah Kovoov, refused to give a statement to the United States Attorney representing the Government in this case upon a claim that it would violate attorney-client communication privilege. The Magistrate Judge had ruled in the Order for Answer that DeVito’s claim of ineffective assistance of trial counsel waived the privilege, but apparently

Attorney Kovoov was unwilling to accept that ruling. DeVito's Objections indicate that he too wants to hear what Attorney Kovoov has to say on the subject.

DeVito's suggested cure is to set the matter for evidentiary hearing, although he never made that request prior to the filing of the Report and Recommendations and in fact failed to file a reply at all.

Before setting the matter for an evidentiary hearing, it is in the interest of judicial economy to discover what Attorney Kovoov has to say and to give her an opportunity to put her position on attorney-client communication privilege before the Court personally.

Accordingly, the Report is WITHDRAWN. It is hereby ORDERED that Defendant take the deposition of Attorney Kovoov as promptly as possible and thereafter cause the deposition to be transcribed and filed. Defendant shall serve Attorney Kovoov with a subpoena commanding her appearance at the deposition and file the subpoena with the Court, along with proof of service. The subpoena shall be served sufficiently in advance of the scheduled deposition to permit Attorney Kovoov sufficient time to move to quash and for the parties to respond.

After the deposition has been transcribed and filed, Defendant may renew his motion for an evidentiary hearing.

June 1, 2021.

s/ *Michael R. Merz*  
United States Magistrate Judge